is continuing at the time of the injury suffered, it is so in one of two ways: it is either concurrent with that of the defendant as an active cause in producing the result — in which case the plaintiff will be barred; or it is continuing in the sense of being a condition of the dangerous situation — in which case the defendant's act will be considered as the legal cause of the injury, and the plaintiff will not be barred. The negligence of the plaintiff does not absolve the defendant from his duty of care. In the language of Carpenter, J., in *Company* v. *Railroad*, 62 N. H. 164: "If due care on the part of either at the time of the injury would prevent it, the antecedent negligence of one or both parties is immaterial, except it may be as one of the circumstances by which the requisite measure of care is to be determined. In such a case the law deals with their behavior in the situation in which it finds them at the time the mischief is done, regardless of their prior misconduct. The latter is *incuria*, but not *incuria dans locum injuriae* — it is the cause of the danger; the former is the cause of the injury." It is not claimed that this test — namely, fixing the liability on the last human wrong-doer — will reconcile all authorities, yet it is claimed that it will reconcile more than any other test suggested.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — EMPLOYER'S LIABILITY ACT — CONTRACT IN CONTRAVENTION OF. — Code Ala. § 2590, subd. 5, makes an employer liable to an employee for personal injuries resulting from the negligence of any person in the employer's service, who has charge or control of any engine, car, or train upon a railroad. *Held*, that a provision in a contract between a railroad company and a switchman, whereby the regular wages paid the latter were to cover all risks and liability to accident from every cause, and the right to damages was not to be recognized, was "in contravention of the statutory provisions, opposed to public policy," and void. *Hissong* v. *Richmond & D. R. Co.*, 8 So. Rep. 776 (Ala.).

An opposite view of such a contract was taken in England, *Griffiths* v. *Earl of Dudley*, L. R. 9 Q. B. Div. 357. But see *Baddeley* v. *Earl of Granville*, L. R. 19 Q. B. Div. 423. In this country, in those States where it is not settled by statute, both views find support.

AGENCY — INTOXICATING LIQUORS — SALE BY AGENT. — One who unlawfully sells liquor, as clerk or agent for a wholesale liquor-dealer, without a license, may be convicted of carrying on the business of a wholesale liquor-dealer without a license, though he has no pecuniary interest other than as agent or clerk. *Abel* v. *State*, 8 So. Rep. 760 (Ala.).

BILLS AND NOTES. — One S obtained by fraud a United States postal money-order payable to A or order. He forged the indorsement of A upon it, and obtained payment from the post-office, in the form of a check payable to A or order, drawn by the United States upon the defendant bank. The post-office clerk was not negligent in paying S, as the latter had fraudulently contrived to get several reputable persons to identify him as A. S took the check to the defendant bank, indorsed it in the name of A, was identified by the same persons as before, and received payment. The United States, on discovery of the fraud, paid the amount of the order to A, and brought action against the bank for the money paid by it upon the check. *Held*, that the plaintiff could not

recover; that, if anything, the plaintiff was more in fault, as he had put it in the power of S to obtain the money; and that, apart from negligence, it was a case of equal equities, in which the loss must remain where it fell. *United States* v. *National Exchange Bank*, 45 Fed. Rep. 163.

The decision of this case is correct, but the grounds upon which it is placed are, with deference, hardly satisfactory. As the check was given by the drawer directly to S, the title to the obligation must have passed to S, just as the title to a chattel passes to a fraudulent purchaser. And S, having obtained the title by fraud, must also have acquired a right to indorse in the name by which he had been designated as payee by the drawer. The bank, therefore, having no notice of the fraud, and paying to S on his indorsement in the name of A, strictly complied with the order of the drawer, and could in no wise be responsible.

BILLS AND NOTES — COLLATERAL AGREEMENT BETWEEN INDORSER AND INDORSEE. — Action by indorsees against the indorser of a promissory note. The defence was failure to present the note for payment at maturity. Plaintiffs offered to prove at the trial that at the time of indorsement defendant verbally waived demand upon the makers at maturity, notice thereof, and of non-payment. *Held*, that evidence of such collateral agreement was not admissible. *Farwell et al.* v. *St. Paul Trust Co.*, 48 N. W. Rep. 326 (Minn.).

CARRIERS — SHIPMENT AND DELIVERY OF LIVE-STOCK. — A carrier of live-stock cannot make a valid agreement to receive and deliver all stock consigned to it exclusively at and through the stock-yards of another corporation, and to charge the shipper or consignee, for the benefit of such corporation, a certain sum for the use of its yards, in addition to charges for transportation. *Covington Stock-Yards Co.* v. *Keith*, 11 Sup. Ct. Rep. 461.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — A statute of Kentucky imposes a license tax on peddlers, and makes voidable, as against a peddler failing to pay the license, all contracts of sale made by such peddler. *Held*, in action on a promissory note, that the statute applies to citizens of another State bringing goods into Kentucky to sell, and that, as so construed, it is not inconsistent with Art. I., sec. 8, or Art. IV., sec. 2, of the Constitution of the United States. *Rash* v. *Farley*, 15 S. W. Rep. 862 (Ky.).

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — LICENSING OF TUG-BOATS. — Tug-boats employed in towing vessels engaged in interstate commerce into and through the harbor of Chicago and along the Chicago river, thereby assisting such vessels to begin and end their voyages to other States, are themselves engaged in interstate commerce. A city ordinance, prohibiting the use of such tug-boats, except under license from the city, is an unconstitutional interference with interstate commerce. *Harmon* v. *City of Chicago*, 26 N. E. Rep. 697 (Ill.).

CONTRACTS — BREACH — RECOVERY OF CONSIDERATION. — The plaintiff had leased to the defendant several printing-presses at a fixed sum, to be paid in monthly instalments, with an option of final purchase. The defendant gave several promissory notes as security for the payment of the several sums when due. The plaintiff having, in accordance with the terms of the lease, on the failure of one monthly payment taken possession of the presses, brought suit on the notes. *Held*, that the covenants were dependent, and the agreement having thus been rescinded, there could be no recovery on the notes for failure of consideration. *Campbell Printing Press and Manufacturing Co.* v. *Hickok*, 21 Atl. Rep. 362 (Pa.).

CORPORATIONS — TELEGRAPH AND TELEPHONE. — A telegraph company, organized under the telegraph act, may in the exercise of its proper powers under that act condemn land for the erection of a line of telephone. *State* v. *Central New Jersey Tel. Co.*, 21 Atl. Rep. 460 (N. J.).

CORPORATIONS — ULTRA VIRES CONTRACT. — A corporation chartered "for the transportation of passengers in railroad cars, constructed and to be owned by the said company," under certain patents, and empowered to enter into contracts with other corporations "for the leasing or hiring and transfer to them" of their cars and other personal property, leased for ninety-nine years to another corporation in the same business all its property, including its cars, patents, and all contracts with railroad companies for the hire of its cars, and agreed that while the lease was in force it would not engage in the business of manufacturing and using or hiring cars. *Held*, that the cor-

poration was *quasi* public, and the lease was void as *ultra vires*, and because it was an abandonment by the lessor of its duty to the public. *Central Transp. Co.* v. *Pullman's Palace Car Co.*, 11 Sup. Ct. Rep. 478.

CRIMINAL LAW — CONTRACT FOR ALIEN LABOR. — The defendant was indicted for having prepaid the transportation of aliens under contract to perform labor for him in the United States, contrary to 23 U. S. St. 333. *Held*, that the offence was not committed unless there was a valid contract with the aliens. *United States* v. *Edgar*, 45 Fed. Rep. 44.

CRIMINAL LAW — MURDER — RESISTING UNLAWFUL ARREST. — Homicide done in resisting an unlawful arrest will not be reduced to manslaughter because of that fact, unless accused was aware at the time that the arrest was unlawful. In the absence of such knowledge, there is no reason for assuming the existence of sudden passion, which the law regards as naturally provoked when interference with personal liberty is wrongful and known as such. *Drew's Case*, 4 Mass. 391, explained and qualified. *Ex parte Sherwood*, 15 S. W. Rep. 812 (Tex.).

EQUITY — INJUNCTION — INTERSTATE COMMERCE. — The complainants filed a bill for an injunction, alleging that they, as agents for dealers in another State, were engaged in selling liquor in original packages, and that by civil and criminal proceedings under the prohibitory law of the State, the defendants were seeking to break up and destroy complainant's business in violation of their rights under the Federal Constitution. There was no allegation that the defendants were insolvent, or were likely to do irreparable damage. *Held*, that the bill would not lie to restrain the criminal proceedings, as equity had no such power; that it would not lie to enjoin the civil proceedings, as there was an adequate remedy at law. *Hemsley* v. *Myers*, 45 Fed. Rep. 283. [Compare *Tuchman v. Welch*, 42 Fed. Rep. 548.]

EQUITY — INJUNCTION — WRONGFUL ATTACHMENT. — Where the property wrongfully attached is a stock of merchandise, which in connection with his business constitutes the whole of the owner's resources, he may have an injunction against closing his store and the sale of the goods, since trespass or replevin is not an adequate remedy, as damages are recoverable therein only for the value of the goods, and not for the destruction of his business. *North* v. *Peters*, 11 Sup. Ct. Rep. 346. This follows *Watson* v. *Sutherland*, 5 Wall. 74, 78, 79.

EQUITY — SALE OF CHURCH PROPERTY FOR DEBTS. — A court may compel the sale of a church site and edifice to pay the salary of the pastor. *Lyons et al.* v. *Planters' Loan & Savings Bank*, 12 S. E. Rep. 882 (Ga.).

See *ante*, p. 91.

EVIDENCE — ACCOUNT-BOOKS. — Entries in the account-books of a corporation are not *per se* competent evidence on behalf of the corporation in an action against a director. Reversing 7 N. Y. Supp. 535. *Rudd* v. *Robinson*, 26 N. E. Rep. 1046 (N. Y.).

MUNICIPAL CORPORATIONS — BUILDINGS FOR PRIVATE PURPOSES. — Under a statute authorizing a city to appropriate public money for the erection of a hall to be used and maintained as a memorial to the soldiers and sailors of the War of the Rebellion, the city has no power to make an appropriation for the erection of a building to be used in part by a certain Grand Army Post during its existence as an organization, since that is not a public use. *Kingman et al.* v. *City of Brockton*, 26 N. E. Rep. 998 (Mass.).

PARLIAMENTARY LAW — POWERS OF PRESIDING OFFICER. — The mayor of the city of Little Rock is by statute president of the Common Council. Plaintiff, a member of that body, being somewhat disorderly but not violent, was given by the mayor into the hands of the executive officer and expelled. *Held*, in an action for assault and false imprisonment, that he could recover. A presiding officer, by usage and the common law, has no right of his own motion to put an offending member into custody unless actual violence is threatened. *Thompson* v. *Whipple et al.*, 15 S. W. Rep. 604 (Ark.).

REAL PROPERTY — RULE IN SHELLEY'S CASE. — A testator devised an estate to his son, "for and during the term of his natural life," and continued: "At the death of said son, I give and devise said lands in fee simple to the persons who would have inherited the same from the said son had he owned the same in fee simple at the time

of his death; but the provisions of this item shall vest in the said son only a life estate in said lands, and nothing more." *Held*, that the words describing those entitled after the son's death are words of purchase, and not of inheritance, and the rule in Shelley's Case does not apply, and the son took only a life estate. *Earnhart* v. *Earnhart*, 26 N. E. Rep. 895 (Ind.).

REAL PROPERTY — STATUTE OF LIMITATIONS — INDEPENDENT ADVERSE HOLDINGS. — In Alabama independent adverse holdings of land cannot be added to make up the statutory period and bar a recovery; but some privity must be shown between the adverse holders. *Lucy* v. *Tennessee & C. R. Co.*, 8 So. Rep. 806 (Ala.).

STATUTE OF LIMITATION — CONVERSION — DEMAND AND REFUSAL. — A lease belonging to the plaintiff was fraudulently taken from him by his son and deposited without his knowledge with B in 1881, as security for the repayment of money lent by B, who held the lease without knowledge of the fraud. B having become bankrupt, his trustee in 1889 assigned the debt to the defendant and handed the lease over to him. Subsequently the plaintiff demanded the lease of the defendant, and on his refusal to return it sued for detinue and conversion, to which the defendant pleaded the Statute of Limitations. *Held*, that the statute began to run from the time when the plaintiff first had a complete cause of action against the defendant, irrespective of the question whether he had a previous cause of action against B; that the statute, therefore, only began to run from the date of the demand and refusal, and was no answer to the action (following *Spackman* v. *Foster*, L. R. 11 Q. B. D. 99). The decision contained a dictum by Lord Esher that if one man is guilty of a wrongful conversion, and afterwards a second man converts the same thing, the cause of action against the second man is not barred by the statute, though the cause of action against the first man accrued more than six years before the second conversion; that the property in chattels is not changed by the Statute of Limitations, though more than six years has elapsed. *Miller* v. *Dell* [1891], 1 Q. B. 468 (Ct. of App.) (Eng.).

WILLS — RIGHT OF JUDGMENT-CREDITOR OF THE HEIR TO CONTEST THE WILL OF TESTATOR. — Testator, by his will, devised all his real estate to others than his only son and heir-at-law. Previous to testator's death one of the creditors of the son secured judgments against the son which became liens on all the real estate which the son had or might hereafter have. *Held*, that such judgment-creditor had a sufficient interest to entitle him to contest the validity of the will. *In re Langevin's Will*, 47 N. W. Rep. 1133 (Wis.).

WILL — ADEMPTION — PRESUMPTION AGAINST DOUBLE PORTIONS. — Testator by his will bequeathed twenty-one twenty-fourth shares in a brewery business to his three sons as tenants in common. The eldest son, being employed as a manager in the business, pressed his father for an increase of salary. The father transferred to the eldest son two of the twenty-fourth shares in lieu of salary. *Held*, that in this case the presumption against double portions arose, and as that presumption had not been rebutted, the gift of the two shares must be treated as an ademption of the eldest son's one-third part, and he could therefore take only five of the remaining nineteen shares. *Re Lacon*, 64 L. T. Rep. N. S. 22 (Eng.).

REVIEWS.

A TREATISE ON THE LAW OF SALES OF PERSONAL PROPERTY, INCLUDING THE LAW OF CHATTEL MORTGAGES. By Christopher G. Tiedeman, author of "Real Property," "Commercial Paper," etc. The F. H. Thomas Law Book Co. St. Louis, 1891. 8vo. Pages 769.

The author's purpose in publishing this new work on sales is, as he says in his preface, to supply a "comprehensive treatise of a distinctively American type." But in fact it is so comprehensive that it is more a digest than a treatise. Little space is given as a whole to the discus-